

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

In Re: Martyn C. Reece

Case No.: 8:14-bk-08027-KRM

Chapter 13

Motion to Compel

COMES NOW, Fairway Oaks Villas Association, Inc. ("Fairway Oaks" or "Movant"), a creditor in interest, by and through counsel, and moves this Court to compel the Debtor and Christiana Trust, a Division of Wilmington Savings Fund Society, FSB, as Trustee for Stanwich Mortgage Loan Trust, Series 2012-13, successor to Mortgage Electronic Registration Systems, Inc. as nominee for SunTrust Mortgage, Inc. ("Christiana Trust"), to submit a proposed order on Christiana Trust's Motion for Relief from Order and Reconsideration of Debtor's Motion to Vest Non-Homestead Real Properties in Mortgage Creditor, and in support thereof states as follows:

1. Martyn C. Reece ("Debtor") filed a Chapter 13 petition (Doc. No. 1) in this case on July 11, 2014 ("Petition Date").
2. On the Petition Date, Debtor was the owner of real property located at 3211 Sea Marsh Rd, Fernandina Beach, FL 32034 (the "Property") (Doc. No. 20, ¶ 2(a)), more particularly described as follows:

THAT CERTAIN CONDOMINIUM PARCEL LOCATED IN NASSAUCOUNTY, FLORIDA, COMPOSED OF VILLA UNIT NUMBER 3211 AND AN UNDIVIDED SHARE IN THOSE COMMON ELEMENTS APPURTENANT THERETO, AS DESCRIBED IN AND SUBJECT TO THE COVENANTS, CONDITIONS, RESTRICTIONS AND OTHER

PROVISIONS OF THAT DECLARATION OF CONDOMINIUM OF FOR "FAIRWAY OAK VILLAS, A CONDOMINIUM," MADE BY SPONSOR, AMELIA ISLAND COMPANY, PURSUANT TO CHAPTER 711 (NOW CHAPTER 718), OF THE FLORIDA STATUTES, WHICH IS RECORDED IN THE PUBLIC RECORDS OF NASSAU COUNTY, FLORIDA, IN OFFICIAL RECORDS 160, PAGES 366-415; AND THE SPONSOR'S FIRST AMENDMENT TO SAID DECLARATION, RECORDED IN THE PUBLIC RECORDS OF NASSAU COUNTY, FLORIDA, OF OFFICIAL RECORDS BOOK 162, PAGES 154-165; AS FURTHER AMENDED IN OFFICIAL RECORDS BOOK 481, PAGES 776- 779; SAID DECLARATION OF CONDOMINIUM, AS AMENDED, BEING MADE A PART HEREOF, BY SPECIFIC REFERENCE.
PARCEL NUMBER 01-6N-29-V090-3211-0000

3. Movant herein is a condominium association and a Florida corporation, not for profit, operating pursuant to the provisions of Chapter 718, Florida Statutes.

4. The Property is located within the Movant's condominium association.

5. On the Petition Date, Movant was a secured creditor with a claim in the amount of \$55,781.52 for assessments, as evidenced by POC #1 filed on August 14, 2014.

6. On the Petition Date, the Property was also encumbered by a first mortgage held by Christiana Trust, recorded on June 6, 2007 at Book No. 1503, Page No. 1532, Instrument No. 200718521, of the Official Records of Nassau County, Florida in the amount of \$410,000. Doc. No. 20, ¶3.

7. On August 29, 2014, Debtor filed an Amended Chapter 13 plan ("Plan") surrendering the Property. Doc. No. 19.

8. Paragraph 8(e)(2) of the Plan provides:

"All collateral surrendered for Secured Claims Class H is surrendered in full satisfaction of the underlying claim. Pursuant to §§1322(b)(8) and (9), title to the property located at **3211 Sea Marsh Rd., Fernandina Beach, FL 32034** shall vest in **Christiana Trust, a Division of Wilmington Savings Fund Society, FSB, as Trustee for Stanwich Mortgage Loan Trust, Series 2012-23** upon confirmation, and the Confirmation Order shall constitute a deed of conveyance

of the property when recorded in the Nassau County Official Records. All secured claims secured by the Debtor's property located at 3211 Sea Marsh Rd., **Fernandina Beach**, FL 32034 shall be paid by surrender of the collateral and foreclosure of the security interests."

9. On September 5, 2014, Debtor filed a Motion to Vest Non-Homestead Real Properties in Mortgage Creditor Christiana Trust ("Motion to Vest"). Doc. No. 20.

10. In the Motion to Vest, the Debtor requests that the Property vest in Christiana Trust upon the recordation of the Confirmation Order in the Official Records of Nassau County, Florida. Doc. No. 20.

11. In support of the request to vest the property in Christiana Trust, Debtor stated that despite the fact that the Property was surrendered by Debtor in a previous Chapter 7 Bankruptcy, nearly four years prior to this case, Christiana Trust failed to reclaim the Property or foreclose its interest. Doc. No. 20, ¶ 14.

12. Christiana Trust failed to file a response to the Motion to Vest.

13. On October 14, 2014 an Order was entered vesting the Property in Christiana Trust upon confirmation of the Plan and upon recordation in the public records of a certified copy of said order and the order confirming the plan. Doc. No. 28.

14. On October 22, 2014, Christiana Trust filed a Motion for Relief from Order and Reconsideration of Debtor's Motion to Vest Non-Homestead Real Properties in Mortgage Creditor, Christiana Trust, requesting that the Court reconsider the entry of the Order at Doc. No. 28 ("Motion to Reconsider"). Doc No. 35.

15. Upon information and belief, on December 10, 2014, during the hearing on the Motion to Reconsider, counsel for Christiana Trust and counsel for the Debtor informed the court that they had settled the matter. Doc. No. 47.

16. Maurice Hinton, Esq. appearing on behalf of Christiana Trust, was ordered by the Court to draft the Proposed Order. Doc. No. 47

17. Pursuant to Local Rule 9072-1(c) and Doc. No. 47, the Proposed Order was to be submitted within three days after the date of the hearing.

18. To date the Proposed Order has not been submitted to the Court for entry.

19. The party's failure to submit the Proposed Order is in violation of Local Rule 9072-1(c).

20. According the agreement between Christiana Trust and the Debtor, the Debtor was to execute a deed vesting the Property in Christiana Trust.

21. To date, a deed vesting the Property in Christiana Trust has not been filed in the Public Records of Nassau County, Florida.

22. As the Plan, confirmed on December 29, 2014 surrendered the Property, Movant's will not be paid the pre-petition debt it is owed. Doc. No. 49.

23. Moreover, Movant has not received any post-petition assessments from the Debtor. There is a current amount owing to the Movant in excess of \$70,000.

24. Movant is being irreparably harmed by Christiana Trust and the Debtor's failure to submit an Order resolving the Motion to Reconsider and record a Deed vesting the Property in Christiana Trust.

25. The Court has an inherent power to regulate the conduct of parties and lawyers who appear before it. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991); *In re Evergreen Security, Ltd.*, 570 F.3d 1257, 1263 (11 Cir. 2009); *In re Walker*, 532 F.3d 1304, 1309 (11 Cir. 2008). Therefore, Movant requests that the Court compel the

Debtor and Christiana Trust to provide a proposed order to the Court and to record a deed vesting the Property in Christiana Trust.

WHEREFORE, Debtor respectfully requests this Honorable Court enter an order: (a) compelling the Christiana Trust and the Debtor to submit a proposed order for the Motion to Reconsider; (b) record a deed vesting the Property in Christiana Trust, a Division of Wilmington Savings Fund Society, FSB, as Trustee for Stanwich Mortgage Loan Trust, Series 2012-13; and (c) granting such other and further relief as the court deems appropriate.

Dated: February 23, 2015

Respectfully Submitted,

/s/ Pamela A. Miller, Esq.

Pamela A. Miller, Esq.

FL. Bar. 104098

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CERTIFICATE OF SERVICE

I hereby certify that on February 23, 2015, I electronically filed the foregoing with the Clerk of the Court and, under Fed. R. Bankr. 9036 and CM/ECF Policy 9, served it on the parties listed below by the Notice of Electronic filing generated by the Court's ECF system.

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